

3 Am. Jur. 2d Affidavits Summary

American Jurisprudence, Second Edition | May 2021 Update

Affidavits

Carrie A. Wood, J.D., of the staff of the National Legal Research Group, Inc.

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Summary

Scope:

This article discusses the basic aspects of affidavits, including the definition and nature of affidavits, who may make affidavits, the taking of affidavits, the elements of an affidavit, and the use of affidavits and their admissibility and sufficiency.

Treated Elsewhere:

Acknowledgments, see [Am. Jur. 2d, Acknowledgments §§ 1 et seq.](#)

Affidavit as basis for arrest, see [Am. Jur. 2d, Arrest §§ 17 to 19](#)

Affidavits in federal court proceedings, use of, see [Am. Jur. 2d, Federal Courts §§ 1 et seq.](#)

Application for change of venue in criminal case, support by affidavit, see [Am. Jur. 2d, Criminal Law § 487](#)

Contempt, use of affidavits to establish, see [Am. Jur. 2d, Contempt § 182](#)

Continuance, affidavits supporting motion for, see [Am. Jur. 2d, Continuance § 90](#)

Criminal liability in connection with making of false affidavit, see [Am. Jur. 2d, Perjury §§ 40 to 43](#)

Defamation, statements made in affidavit as privileged from liability for, see [Am. Jur. 2d, Libel and Slander § 286](#)

Depositions, see [Am. Jur. 2d, Depositions and Discovery §§ 1 et seq.](#)

Indigent defendant, requirement of affidavit as to financial condition to establish entitlement to appointed counsel, see [Am. Jur. 2d, Criminal Law § 1114](#)

Oaths and affirmations, generally, see [Am. Jur. 2d, Oath and Affirmation §§ 1 et seq.](#)

Verification of pleading or written accusations in civil and criminal cases, see [Am. Jur. 2d, Indictments and Informations §§ 80 to 83](#); [Am. Jur. 2d, Pleading §§ 839 to 849](#)

Research References:

Westlaw Databases

[All Federal Cases \(ALLFEDS\)](#)

[All State Cases \(ALLSTATES\)](#)

[American Law Reports \(ALR\)](#)

[West's A.L.R. Digest \(ALRDIGEST\)](#)

[American Jurisprudence 2d \(AMJUR\)](#)

[American Jurisprudence Legal Forms 2d \(AMJUR-LF\)](#)

[American Jurisprudence Pleading and Practice Forms Annotated \(AMJUR-PP\)](#)

[Federal Rules \(US-RULES\)](#)

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3 Am. Jur. 2d Affidavits I Refs.

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Affidavits

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I. In General

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Research References

West's Key Number Digest

West's Key Number Digest, [Affidavits](#)  1

A.L.R. Library

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3 Am. Jur. 2d Affidavits § 1

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I. In General

§ 1. Generally; definition

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West's Key Number Digest
West's Key Number Digest, [Affidavits](#)  [1](#)

An “affidavit” is a voluntary¹written statement²of fact³under oath⁴sworn to or affirmed by the person making it⁵before some person who has authority under the law to administer oaths.⁶An affidavit must bear on its face, by the certificate of the officer before whom it is taken, evidence that it was duly sworn to by the party making the same.⁷

The proper function of an affidavit is to state facts, not conclusions.⁸There is a distinction between types of affidavits: some serve as evidence and advise the court as it decides preliminary issues or determines substantial rights where evidence is not in conflict while others merely serve to invoke judicial power and are pledges of good faith in the commencement of suits.⁹

No particular terminology is required to render a document an affidavit.¹⁰

Definition:

A “verification” is a type of statement given under oath where the declarant must not only refrain from making a knowingly false statement but must also have affirmative knowledge of the statement’s truthfulness.¹¹

Practice Tip:

The question of whether a document constitutes an affidavit is normally a question of law.¹²

Observation:

In some jurisdictions, matters that are supportable by affidavit are generally also supportable by a declaration under penalty of perjury, which is an unsworn statement subscribed to by the person making it and certified or declared to be true under penalty of perjury.¹³

Attorneys and certain specified medical professional persons are authorized by statute in particular jurisdictions to serve an affirmation bearing the person's signature alone in lieu of and with the same force and effect as an affidavit.¹⁴ Some states provide for a "professional statement" which is statement of fact presented to the court by an attorney in connection with a matter then before such court, verified in effect by the oath of such attorney, and designed or calculated to aid or influence the court in the determination of a given cause or issue.¹⁵ An attorney's professional statement has the effect of an affidavit.¹⁶

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Footnotes

- ¹ Pappas v. State, 179 Ind. App. 547, 386 N.E.2d 718 (1979); Detroit Leasing Co. v. City of Detroit, 269 Mich. App. 233, 713 N.W.2d 269 (2005); Thomas v. Greenwood Leflore Hosp., 970 So. 2d 273 (Miss. Ct. App. 2007); Moyer v. Nebraska Dept. of Motor Vehicles, 275 Neb. 688, 747 N.W.2d 924 (2008); Alan J. Cornblatt, P.A. v. Barow, 153 N.J. 218, 708 A.2d 401 (1998); State v. Boyse, 150 N.M. 712, 2011-NMCA-113, 265 P.3d 1285 (Ct. App. 2011), cert. granted, 2011-NMCERT-011, 290 P.3d 726 (N.M. 2011); State v. Harrington, 172 Ohio App. 3d 595, 2007-Ohio-3796, 876 N.E.2d 626 (4th Dist. Scioto County 2007); Ackler v. Raymark Industries, Inc., 380 Pa. Super. 183, 551 A.2d 291 (1988); Scarborough v. Wright, 871 A.2d 937 (R.I. 2005); Clay v. Portik, 84 Wash. App. 553, 929 P.2d 1132 (Div. 2 1997); Fugate v. Mayor and City Council of Town of Buffalo, 348 P.2d 76, 97 A.L.R.2d 243 (Wyo. 1959).
An affidavit requires that the affiant make a conscious and unequivocal act. State v. Bishop, 921 S.W.2d 765 (Tex. App. San Antonio 1996).
- ² Buckwalter v. Dist. Ct., 234 P.3d 920, 126 Nev. Adv. Op. No. 21 (Nev. 2010); Donnellan v. City of Novato, 86 Cal. App. 4th 1097, 103 Cal. Rptr. 2d 882 (1st Dist. 2001); Jackson v. State, 881 So. 2d 666 (Fla. 5th DCA 2004); Wood v. Bediako, 272 Mich. App. 558, 727 N.W.2d 654 (2006); State v. Boyse, 150 N.M. 712, 2011-NMCA-113, 265 P.3d 1285 (Ct. App. 2011), cert. granted, 2011-NMCERT-011, 290 P.3d 726 (N.M. 2011).
- ³ Bigler v. State, 602 N.E.2d 509 (Ind. Ct. App. 1992); Sherry v. East Suburban Football League, 292 Mich. App. 23, 807 N.W.2d 859 (2011).
- ⁴ Meigs v. Black, 25 Kan. App. 2d 241, 960 P.2d 770 (1998); Kiehne v. Atwood, 93 N.M. 657, 604 P.2d 123 (1979); State ex rel. Oklahoma Bar Ass'n v. Dobbs, 2004 OK 46, 94 P.3d 31 (Okla. 2004); Evans v. Com., 39 Va. App. 229, 572 S.E.2d 481 (2002).
- ⁵ Buckwalter v. Dist. Ct., 234 P.3d 920, 126 Nev. Adv. Op. No. 21 (Nev. 2010); Save Energy Reap Taxes v. Shaw, 374 Ark. 428, 288 S.W.3d 601 (2008); Jackson v. State, 881 So. 2d 666 (Fla. 5th DCA 2004); Haygood v. Head, 305 Ga. App. 375, 699 S.E.2d 588 (2010), cert. denied, (Feb. 28, 2011); Wood v. Bediako, 272 Mich. App. 558, 727 N.W.2d 654 (2006); Moore v. M & M Logging, Inc., 51 So. 3d 216 (Miss. Ct. App. 2010), cert. denied, 50 So. 3d 1003 (Miss. 2011); Manchenton v. Auto Leasing Corp., 135 N.H. 298, 605 A.2d 208 (1992); State v. Dunbar, 361 S.C. 240, 603 S.E.2d 615 (Ct. App. 2004).
- ⁶ Save Energy Reap Taxes v. Shaw, 374 Ark. 428, 288 S.W.3d 601 (2008); Roberson v. Ocwen Federal Bank FSB, 250 Ga. App. 350, 553 S.E.2d 162 (2001); Brennan v. Kolman, 335 Ill. App. 3d 716, 269 Ill. Dec. 847, 781 N.E.2d 644 (1st Dist. 2002); Russell v. State, 849 So. 2d 95 (Miss. 2003).
- ⁷ Anderson v. Hardoman, 286 Ga. App. 499, 649 S.E.2d 611 (2007); Valeriano-Cruz v. Neth, 14 Neb. App. 855, 716 N.W.2d 765 (2006); In re Butler, 270 S.W.3d 757 (Tex. App. Dallas 2008).

- ⁸ [Scott v. Ranch Roy-L, Inc.](#), 182 S.W.3d 627 (Mo. Ct. App. E.D. 2005).
An affidavit that contains only legal conclusions is substantively deficient, and although formal deficiencies in an affidavit can be waived if not raised in trial court, substantive deficiencies cannot be waived. [Elam v. Quest Chemical Corp.](#), 884 S.W.2d 907 (Tex. App. Beaumont 1994), judgment rev'd on other grounds, 898 S.W.2d 819 (Tex. 1995) and writ granted, (May 25, 1995).
- ⁹ [Unifund CCR Partners v. Shah](#), 407 Ill. App. 3d 737, 349 Ill. Dec. 389, 946 N.E.2d 885 (1st Dist. 2011); [Lincoln Nat. Bank v. Mundinger](#), 528 N.E.2d 829 (Ind. Ct. App. 1988).
An affidavit is simply a method of placing evidence of a fact before the court. [Brown v. Jorgensen](#), 2006 UT App 168, 136 P.3d 1252 (Utah Ct. App. 2006).
- ¹⁰ [Harris v. Emory Healthcare, Inc.](#), 269 Ga. App. 274, 603 S.E.2d 778 (2004); [Bloyed v. General Motors Corp.](#), 881 S.W.2d 422 (Tex. App. Texarkana 1994), writ granted, (Feb. 16, 1995) and judgment aff'd, 916 S.W.2d 949 (Tex. 1996).
- ¹¹ [Double S, Inc. v. Northwest Kansas Production Credit Ass'n](#), 17 Kan. App. 2d 740, 843 P.2d 741 (1992); [In re Petition for Writ of Certiorari as to Determination of Election on Brookings School District's Decision to Raise Additional General Fund](#), 2002 SD 85, 649 N.W.2d 581 (S.D. 2002).
- ¹² [Meigs v. Black](#), 25 Kan. App. 2d 241, 960 P.2d 770 (1998).
- ¹³ [In re Morelli](#), 11 Cal. App. 3d 819, 91 Cal. Rptr. 72 (2d Dist. 1970).
- ¹⁴ [Slavenburg Corp. v. Opus Apparel, Inc.](#), 53 N.Y.2d 799, 439 N.Y.S.2d 910, 422 N.E.2d 570 (1981) (ruling that even those persons who are statutorily allowed to use affirmations in lieu of affidavits cannot do so when they are a party to an action).
A statute allowing attorneys, physicians, osteopaths, and dentists who are not parties to an action to serve or file affirmations of truth in lieu of affidavits did not apply to plaintiffs' treating chiropractor in a personal injury action. [Casas v. Montero](#), 48 A.D.3d 728, 853 N.Y.S.2d 358 (2d Dep't 2008).
- ¹⁵ [Gilbride v. Trunnelle](#), 620 N.W.2d 244 (Iowa 2000).
A "professional statement" is a technique, used as a matter of convenience and practical necessity to establish a record of matters peculiarly within the knowledge of an attorney. [Blum v. State](#), 510 N.W.2d 175 (Iowa Ct. App. 1993).
- ¹⁶ [Gilbride v. Trunnelle](#), 620 N.W.2d 244 (Iowa 2000).

3 Am. Jur. 2d Affidavits § 2

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Affidavits

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I. In General

§ 2. Distinctions from acknowledgment

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West's Key Number Digest

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[Proper execution of self-proving affidavit as validating or otherwise curing defect in execution of will itself, 1 A.L.R.5th 965](#)

An acknowledgment is a means of authenticating an instrument by showing that it was the act of the person executing it.¹An acknowledgment consists of an oral declaration of the party executing the instrument and a written certificate attesting to the oral declaration.²An acknowledgment does not constitute an “affidavit” because it does not purport to be a certification that the person acknowledging it swears to the truth of the matter set out.³A requirement that a paper be “sworn to” contemplates the execution of an affidavit that the facts contained in it are true and not an acknowledgment.⁴

The difference between an affidavit and an oath is that an affidavit consists of a statement of fact, which is sworn to as the truth, while an oath is a pledge.⁵

Broadly speaking, pleadings and affidavits are distinguishable in that affidavits must state facts under oath, whereas pleadings may contain allegations of ultimate facts, and verification of a pleading may not be necessary in all cases.⁶An affidavit is not a pleading and cannot ordinarily be made to take place of a pleading.⁷However, a verified complaint may be treated as an affidavit if it is made on personal knowledge, sets forth such facts as would be admissible in evidence, and shows affirmatively that the affiant is competent to testify to the matters stated therein.⁸

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Footnotes

§ 2. Distinctions from acknowledgment, 3 Am. Jur. 2d Affidavits § 2

¹ Am. Jur. 2d, Acknowledgments § 1.

² Am. Jur. 2d, Acknowledgments § 1.

³ *Cutler v. Ament*, 726 S.W.2d 605 (Tex. App. Houston 14th Dist. 1987), writ refused n.r.e., (Sept. 16, 1987).
An “acknowledgment” shows, merely prima facie, that the instrument was duly executed whereas a “verification” is an affidavit attached to the statement as to truth of the matters therein set forth. *Eveleigh v. Conness*, 261 Kan. 970, 933 P.2d 675 (1997).
As to the definition of a “verification,” see § 1.

⁴ *State v. Wolfe*, 156 Conn. 199, 239 A.2d 509 (1968); *Gilman Paint & Varnish Co. v. Legum*, 197 Md. 665, 80 A.2d 906, 29 A.L.R.2d 286 (1951).

⁵ Am. Jur. 2d, Oath and Affirmation § 3.

⁶ *State v. Londe*, 345 Mo. 185, 132 S.W.2d 501 (1939).

⁷ *In re Petition to Annex Certain Property to City of Wood Dale*, 244 Ill. App. 3d 820, 183 Ill. Dec. 343, 611 N.E.2d 606 (2d Dist. 1993).

⁸ *Eaker v. Gower*, 189 N.C. App. 770, 659 S.E.2d 29, 231 Ed. Law Rep. 934 (2008).

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3 Am. Jur. 2d Affidavits II Refs.

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II. Persons Who May Make Affidavit

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3 Am. Jur. 2d Affidavits § 3

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II. Persons Who May Make Affidavit

§ 3. Generally

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Forms

Forms relating to identification and oath, generally, see Am. Jur. Legal Forms 2d, Affidavits and Declarations [\[Westlaw® Search Query\]](#)

Forms relating to affidavits and notary, generally, see Am. Jur. Pleading and Practice Forms, Affidavits [\[Westlaw® Search Query\]](#)

Where a statute specifies who can make an affidavit, only an affidavit by that specified person will suffice.¹In the absence of statutory regulation, generally, anyone who has knowledge of the facts and is competent to testify may make an affidavit.²

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Footnotes

¹ Caproc Third Ave., LLC v. Donisi Ins., Inc., 67 So. 3d 312 (Fla. 4th DCA 2011), review denied, 92 So. 3d 212 (Fla. 2012); Standard of Beaverdale, Inc. v. Hemphill, 746 S.W.2d 662 (Mo. Ct. App. E.D. 1988).

² Moore v. Besse, 35 Cal. 184, 1868 WL 778 (1868); Williams v. New Orleans Ernest N. Morial Convention Center, 92 So. 3d 572 (La. Ct. App. 4th Cir. 2012).
As to the necessity of personal knowledge, see § 14.

3 Am. Jur. 2d Affidavits § 4

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II. Persons Who May Make Affidavit

§ 4. Agent or attorney

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West's Key Number Digest

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[Sufficiency of affidavit made by attorney or other person on behalf of plaintiff for purpose of service by publication, 47 A.L.R.2d 423](#)

Forms

Forms relating to attorney affidavits, generally, see Am. Jur. Legal Forms 2d, Affidavits and Declarations; Am. Jur. Pleading and Practice Forms, Affidavits [\[Westlaw® Search Query\]](#)

While the appropriate party to attest to the facts is the party itself, not the party's attorney,¹ statutes sometimes expressly authorize affidavits for certain purposes to be made by agents or attorneys.² Thus, where the principal is absent or ill, or for some other reason is unable to make an affidavit, an affidavit by his or her agent or attorney, who has knowledge of the facts, may be received,³ and it must rest upon his or her personal knowledge in an area in which he or she is competent to testify.⁴ However, an attorney's affidavit that is not based upon personal knowledge is without value.⁵ The affidavit or affirmation of an attorney, even if he or she has no personal knowledge of the facts, may serve as the vehicle for the submission of acceptable attachments which do provide evidentiary proof in admissible form, e.g., documents or transcripts.⁶

It is within the judgment or discretion of the court to receive the affidavit of an agent or attorney in situations where a different construction of the statute might defeat the ends of justice.⁷

The professional statements of a litigant's attorney are treated as affidavits, and the attorney making a statement may be cross-examined regarding substance of the statement.⁸ An attorney may respond to the defendant's legal arguments regarding the case, and the court may consider an affidavit on that basis.⁹

Caution:

The practice of an attorney filing an affidavit on behalf of a client asserting the status of that client is not approved inasmuch as not only does the affidavit become hearsay but it also places the attorney in a position of a witness, thus compromising the attorney's role as an advocate.¹⁰

Practice Tip:

It is good practice for the agent to show he or she has special knowledge, indicating the sources thereof, except when the affidavit may be, and is, made on information and belief.¹¹

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Footnotes

- ¹ Caproc Third Ave., LLC v. Donisi Ins., Inc., 67 So. 3d 312 (Fla. 4th DCA 2011), review denied, 92 So. 3d 212 (Fla. 2012); Leather Facts, Inc. v. Foy, 157 Misc. 2d 35, 595 N.Y.S.2d 874 (N.Y. City Civ. Ct. 1993).
- ² Jackson v. Fincher, 128 Ga. App. 148, 195 S.E.2d 762 (1973); Stephens v. Henry S. Miller Co., 667 S.W.2d 250 (Tex. App. Dallas 1984), writ dismissed by agreement, (July 11, 1984).
As to the verification of a pleading by an attorney or agent, see Am. Jur. 2d, Pleading § 843.
- ³ Wilson v. Steinbach, 98 Wash. 2d 434, 656 P.2d 1030 (1982).
- ⁴ Bowman v. Henard, 547 S.W.2d 527 (Tenn. 1977).
- ⁵ Higgins v. Thurber, 413 N.J. Super. 1, 992 A.2d 50 (App. Div. 2010), judgment aff'd, 205 N.J. 227, 14 A.3d 745 (2011); Warrington v. Ryder Truck Rental, Inc., 35 A.D.3d 455, 826 N.Y.S.2d 152 (2d Dep't 2006).
- ⁶ Tingling v. C.I.N.H.R., Inc., 74 A.D.3d 954, 903 N.Y.S.2d 89 (2d Dep't 2010).
- ⁷ Southern Attractions, Inc. v. Grau, 93 So. 2d 120 (Fla. 1956).
- ⁸ Frunzar v. Allied Property and Cas. Ins. Co., 548 N.W.2d 880 (Iowa 1996).
- ⁹ Leather Facts, Inc. v. Foy, 157 Misc. 2d 35, 595 N.Y.S.2d 874 (N.Y. City Civ. Ct. 1993).
- ¹⁰ Porter v. Porter, 274 N.W.2d 235 (N.D. 1979).
As to affidavits made by agents or attorneys of corporations, see § 5.
- ¹¹ Wakely v. Sun Ins. Office of London, Eng., 246 Pa. 268, 92 A. 136, 3 A.L.R. 128 (1914).

§ 4. Agent or attorney, 3 Am. Jur. 2d Affidavits § 4

As to affidavits on information and belief, see [§ 15](#).

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3 Am. Jur. 2d Affidavits § 5

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II. Persons Who May Make Affidavit

§ 5. Persons acting on behalf of corporation

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A.L.R. Library

[Sufficiency of affidavit made by attorney or other person on behalf of plaintiff for purpose of service by publication, 47 A.L.R.2d 423](#)

Forms

Forms relating to affidavits for corporations, generally, see Am. Jur. Legal Forms 2d, Affidavits and Declarations; Am. Jur. Pleading and Practice Forms, Affidavits [\[Westlaw® Search Query\]](#)

Affidavits on behalf of corporations may be made by any duly authorized officer or agent having knowledge of facts verified.¹ A corporation can execute an affidavit only by and through its officers or persons acting on its behalf.² The theory is that the corporation, when acting in this regard through its officers, is acting per se and not per alium.³ The officer must possess the requisite knowledge.⁴

An important consideration in determining the sufficiency of an affidavit made by an agent or attorney who is not an officer is whether or not the facts alleged are within the personal knowledge of the affiant.⁵ Generally, the agent's personal knowledge of the facts sworn to will not be presumed, and therefore, the means and sources of the agent's information should be shown.⁶

Observation:

A corporate officer may testify that information concerning the company's contacts with the forum state is within his or her personal knowledge without showing with particularity how he or she acquired that knowledge; even if an affiant later states that the affidavit testimony was based on a review of corporate business records, the affiant's acknowledgement of the sources from which he or she gathered the knowledge does not violate the personal knowledge requirement.⁷

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Footnotes

- ¹ Federal Land Bank of Saint Paul v. Anderson, 401 N.W.2d 709 (N.D. 1987); Exito Electronics, Co., Ltd. v. Trejo, 99 S.W.3d 360 (Tex. App. Corpus Christi 2003), review granted, judgment rev'd on other grounds, 142 S.W.3d 302 (Tex. 2004); Harrison Const. Co. v. Greystone Hotel Co., 99 W. Va. 5, 127 S.E. 641 (1925).
As to the verification of pleadings by corporations, see Am. Jur. 2d, Corporations § 1924.
- ² Kepl v. Manzanita Corp., 246 Or. 170, 424 P.2d 674 (1967).
- ³ American Soda Fountain Co. v. Stolzenbach, 75 N.J.L. 721, 68 A. 1078 (N.J. Ct. Err. & App. 1908).
As to necessity of statement as to authority to make affidavit, see § 6.
- ⁴ United Bonding Ins. Co. v. Dura-Stress, Inc., 243 So. 2d 244 (Fla. 2d DCA 1971); Waterman Steamship Corp. v. Ruiz, 355 S.W.3d 387 (Tex. App. Houston 1st Dist. 2011), review denied, (June 22, 2012).
As to the necessity that the affiant state facts within his or her knowledge, generally, see § 14.
- ⁵ Wakely v. Sun Ins. Office of London, Eng., 246 Pa. 268, 92 A. 136, 3 A.L.R. 128 (1914).
As to affidavits made by agents or attorneys, generally, see § 4.
As to the necessity of a statement as to the authority to make an affidavit, see § 3.
- ⁶ Columbia Screw Co. v. Warner Lock Co., 138 Cal. 445, 71 P. 498 (1903); Mintz v. Tri-County Natural Gas Co., 259 Pa. 477, 103 A. 285 (1918).
- ⁷ Waterman Steamship Corp. v. Ruiz, 355 S.W.3d 387 (Tex. App. Houston 1st Dist. 2011), review denied, (June 22, 2012).

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III. Taking of Affidavit

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III. Taking of Affidavit

§ 6. Generally

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[Disqualification of attorney, otherwise qualified, to take oath or acknowledgment from client, 21 A.L.R.3d 483](#)

Forms

Forms relating to affidavits and notary, generally, see Am. Jur. Pleading and Practice Forms, Affidavits [[Westlaw® Search Query](#)]

In order to make an affidavit, the officer, the affiant, and the paper must be present, and there must be something done which amounts to the administration of an oath.¹ The fact of the affiant's swearing must be certified by a proper officer.² In some states, the question of an attorney's qualifications to administer an oath to a client is controlled by statute, and these statutes vary widely.³

Caution:

In the absence of statute, a notary public ordinarily has no power to take an affidavit to be used the basis of a warrant or arrest although in some jurisdictions, the rule is otherwise.⁴

CUMULATIVE SUPPLEMENT

Cases:

While Code of Civil Procedure expressly allows self-verification of documents filed under that Code, such self-verification is not a proper substitute for oaths required by statutes other than that Code, such as those on affidavits required by the Post-Conviction Hearing Act. S.H.A. 725 ILCS 5/122–1(b), 5/122–2; 735 ILCS 5/1–109. *People v. Wideman*, 2013 IL App (1st) 102273, 373 Ill. Dec. 777, 994 N.E.2d 546 (App. Ct. 1st Dist. 2013), as modified, (Aug. 5, 2013).

[END OF SUPPLEMENT]

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Footnotes

¹ *Kropp v. Roberts*, 246 Ga. App. 497, 540 S.E.2d 680 (2000).

² *Lee v. CSX Transp., Inc.*, 233 Ga. App. 30, 503 S.E.2d 309 (1998); *Hough v. Weber*, 202 Ill. App. 3d 674, 147 Ill. Dec. 857, 560 N.E.2d 5 (2d Dist. 1990).

Documents ascribed and sworn to before a person not authorized by law to administer oaths is not an affidavit and is void as such. *State v. Haase*, 247 Neb. 817, 530 N.W.2d 617 (1995).

As to the authority to administer oaths, generally, see *Am. Jur. 2d, Oath and Affirmation* §§ 10 to 14.

³ *Am. Jur. 2d, Oath and Affirmation* § 12.

⁴ *Am. Jur. 2d, Notaries Public* § 34.

3 Am. Jur. 2d Affidavits § 7

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Affidavits

Carrie A. Wood, J.D., of the staff of the National Legal Research Group, Inc.

III. Taking of Affidavit

§ 7. Administering of oath or affirmation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Affidavits](#)  6, 14

Forms

Forms relating to identification and oath, generally, see Am. Jur. Legal Forms 2d, Affidavits and Declarations [\[Westlaw® Search Query\]](#)

The affiant must swear to the affidavit, and the fact of swearing must be certified by a proper officer.¹The notary and affiant must be present together for giving of oath.²An affidavit is not a “lawful affidavit” where signed outside the presence of the officer and no oath was administered.³Thus, a notary’s administration of the oath over a telephone, rather than in the affiant’s presence, does not create a valid affidavit.⁴

It is not necessary that the oath administered be formal, nor is it necessary that any exact words or specific ceremony be used to constitute a valid administration of an oath.⁵For an affidavit to be valid, there must be, in the presence of the officer, something done by which the person to be bound consciously takes upon himself or herself the obligation of an oath.⁶It is not essential that the affiant should hold up his hand and swear in order to make his act an oath, but it is sufficient if both affiant and the officer understand that what is done is all that is necessary to complete the act of swearing.⁷

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Footnotes

¹ [Lee v. CSX Transp., Inc.](#), 233 Ga. App. 30, 503 S.E.2d 309 (1998).

² [Anderson v. Hardoman](#), 286 Ga. App. 499, 649 S.E.2d 611 (2007); [People v. Penaflorida](#), 34 Misc. 3d 420, 932 N.Y.S.2d 682 (N.Y. City Civ. Ct. 2011).

³ [Phoebe Putney Memorial Hosp. v. Skipper](#), 235 Ga. App. 534, 510 S.E.2d 101 (1998).

⁴ [Sambor v. Kelley](#), 271 Ga. 133, 518 S.E.2d 120 (1999).
As to acknowledgments taken over the telephone, see [Am. Jur. 2d, Acknowledgments § 25](#).

⁵ [Harris v. Murray](#), 233 Ga. App. 661, 504 S.E.2d 736 (1998).

⁶ [Harris v. Emory Healthcare, Inc.](#), 269 Ga. App. 274, 603 S.E.2d 778 (2004); [People v. Penaflorida](#), 34 Misc. 3d 420, 932 N.Y.S.2d 682 (N.Y. City Civ. Ct. 2011).

A father's e-mail to his attorney countering the mother's claimed extraordinary expenses for purposes of varying standard child support formula did not constitute an affidavit, even though the subject line of the e-mail listed "affidavit," where the e-mail was unsworn and uncertified. [Koller v. Reft](#), 71 P.3d 800 (Alaska 2003).

⁷ [Harris v. Murray](#), 233 Ga. App. 661, 504 S.E.2d 736 (1998).

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3 Am. Jur. 2d Affidavits IV A Refs.

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Affidavits

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IV. Elements of Affidavit

A. In General

[Topic Summary](#) | [Correlation Table](#)


Research References

West's Key Number Digest

West's Key Number Digest, [Affidavits](#)  9 to 12

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3 Am. Jur. 2d Affidavits § 8

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Affidavits

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IV. Elements of Affidavit

A. In General

§ 8. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Affidavits](#)  9 to 12

A.L.R. Library

[Admissibility of affidavit to impeach witness](#), 14 A.L.R.4th 828

Forms

Forms relating to constituent parts of affidavits, generally, see Am. Jur. Pleading and Practice Forms, Affidavits
[\[Westlaw® Search Query\]](#)

A complete affidavit must satisfy three essential elements: (1) a written oath embodying the facts as sworn to by the affiant; (2) the signature of the affiant; and (3) the attestation by an officer authorized to administer the oath that the affidavit was actually sworn by the affiant before the officer.¹ While an affidavit typically includes a caption or title, the venue, the signature of affiant, the jurat, and the body of the instrument,² no particular terminology is required to render the document an affidavit³ as it is the substance and not the form of the affidavit that is important.⁴ Technical deficiencies do not render affidavits improper⁵ and will not be stricken.⁶ Accordingly, if it affirmatively appears from whole of document that affiant could competently testify to contents of affidavit at trial, then technical insufficiencies in affidavit should be disregarded.⁷

An affidavit must set forth facts and show affirmatively how the affiant obtained personal knowledge of those facts.⁸ Thus, an affidavit that does not positively and unequivocally represent the facts as disclosed in the affidavit to be true and within the

affiant's personal knowledge is legally insufficient.⁹ An objection that an affidavit contains statements of opinion¹⁰ or hearsay are defects in form.¹¹ An objection that statements in an affidavit are conclusory is one that relates to a defect in substance.¹²

Practice Tip:

A verified pleading that sets forth evidentiary facts within the personal knowledge of the verifying signatory is in substance an affidavit and is accorded the same probative force as affidavit.¹³ To function as an opposing affidavit, the verified complaint must be based on personal knowledge and set forth specific facts admissible in evidence.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

Father's purported affidavit failed to meet the procedural requirements for ineffective assistance of counsel claims raised on direct appeal from termination of parental rights orders, and thus father's claim would not be remanded to trial court to adjudicate the full merits of the claim, although the purported affidavit was signed, where purported affidavit was not sworn, and father drew on information that went beyond the record from the trial court in presenting his claim. [U.S. Const. Amend. 6](#). [In re Tyrel L.](#), 2017 ME 212, 172 A.3d 916 (Me. 2017).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Auito v. Auito](#), 288 Ga. 443, 704 S.E.2d 789 (2011).
As to the administration of the oath, see § 7.
As to the signature of the affiant, see § 9.
As to the certificate of the officer, see § 11.
- ² [Acme Brick, a Div. of Justin Industries, Inc. v. Temple Associates, Inc.](#), 816 S.W.2d 440 (Tex. App. Waco 1991), writ denied, (Dec. 11, 1991).
- ³ [Jackson v. Cal-Western Packaging Corp.](#), 602 F.3d 374 (5th Cir. 2010) (stating that there is no requirement that sworn affidavits have a statement that the contents are "true and correct").
- ⁴ [Stone v. Midland Multifamily Equity REIT](#), 334 S.W.3d 371 (Tex. App. Dallas 2011).
- ⁵ [Hoover v. Crippen](#), 151 Ill. App. 3d 864, 105 Ill. Dec. 8, 503 N.E.2d 848 (3d Dist. 1987).
- ⁶ [Allerion, Inc. v. Nueva Icosos, S.A. de C.V.](#), 283 Ill. App. 3d 40, 218 Ill. Dec. 632, 669 N.E.2d 1158 (1st Dist. 1996), as modified on denial of reh'g, (Sept. 17, 1996).
- ⁷ [Kirby v. Jarrett](#), 190 Ill. App. 3d 8, 137 Ill. Dec. 204, 545 N.E.2d 965 (1st Dist. 1989).
- ⁸ [Foundation Materials, Inc. v. Carrollton Mid-City Investors, L.L.C.](#), 66 So. 3d 1230 (La. Ct. App. 4th Cir. 2011), writ

denied, 71 So. 3d 287 (La. 2011); *M.G.M. Grand Hotel, Inc. v. Castro*, 8 S.W.3d 403 (Tex. App. Corpus Christi 1999).

⁹ *Lemon v. Combs*, 164 N.C. App. 615, 596 S.E.2d 344 (2004); *Adams v. Reynolds Tile and Flooring, Inc.*, 120 S.W.3d 417 (Tex. App. Houston 14th Dist. 2003).

¹⁰ *Drew v. Harrison County Hosp. Ass'n*, 20 S.W.3d 244, 99 A.L.R.5th 683 (Tex. App. Texarkana 2000).

¹¹ *Stone v. Midland Multifamily Equity REIT*, 334 S.W.3d 371 (Tex. App. Dallas 2011).

¹² *Cruse v. O'Quinn*, 273 S.W.3d 766 (Tex. App. Houston 14th Dist. 2008).

¹³ *Bruce E. M. v. Dorothea A. M.*, 455 A.2d 866 (Del. 1983); *Loveland v. State*, 141 Idaho 933, 120 P.3d 751 (Ct. App. 2005).

As to the verification of pleadings, generally, see *Am. Jur. 2d, Pleading* §§ 839 to 849.

¹⁴ *Schroeder v. McDonald*, 55 F.3d 454, 32 Fed. R. Serv. 3d 196 (9th Cir. 1995).

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3 Am. Jur. 2d Affidavits § 9

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Affidavits

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IV. Elements of Affidavit

A. In General

§ 9. Signature of affiant

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Affidavits](#)  11

Forms

Forms relating to signatures, generally, see Am. Jur. Legal Forms 2d, Affidavits and Declarations; Am. Jur. Pleading and Practice Forms, Affidavits [[Westlaw® Search Query](#)]

Generally, an affidavit must be sworn to in person before a notary public or other officer empowered to administer oaths for the affidavit to be valid and have the affiant's signature attached.¹

Observation:

A statement signed on behalf of the affiant is not a valid affidavit even if the affiant expressly authorizes the signature.²

In some states, if the affiant is sufficiently identified in the body of the affidavit or in the jurat, a signature is not essential.³

A statement which does not show that the person who made it was under oath is not an affidavit.⁴Oaths to affidavits ordinarily are not required to be administered with any particular ceremony, but the affiant must perform some corporal act before the officer whereby the affiant consciously takes upon himself or herself the obligation of an oath.⁵

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Footnotes

- ¹ Roberson v. Ocwen Federal Bank FSB, 250 Ga. App. 350, 553 S.E.2d 162 (2001); Kelly v. State, 149 Idaho 517, 236 P.3d 1277 (2010); State ex rel. Dawson v. Bloom-Carroll Local School Dist., 131 Ohio St. 3d 10, 2011-Ohio-6009, 959 N.E.2d 524, 275 Ed. Law Rep. 387 (2011).
An affidavit purported to be that of one person but signed by another is worthless and a nullity. *MZ Dental, P.C. v. Progressive Northeastern Ins. Co.*, 6 Misc. 3d 649, 786 N.Y.S.2d 908 (Dist. Ct. 2004).
- ² *In re Spiller*, 303 S.W.3d 426 (Tex. App. Waco 2010).
- ³ *Chmielewski v. Kahlfeldt*, 237 Ill. App. 3d 129, 179 Ill. Dec. 809, 606 N.E.2d 641 (2d Dist. 1992); *In re McAndrew*, 105 Pa. Commw. 503, 524 A.2d 1072 (1987); *Huff v. Com.*, 213 Va. 710, 194 S.E.2d 690 (1973).
- ⁴ *People v. Tlatenchi*, 391 Ill. App. 3d 705, 330 Ill. Dec. 485, 909 N.E.2d 198 (1st Dist. 2009); *Mueller v. Bauer*, 54 S.W.3d 652 (Mo. Ct. App. E.D. 2001).
- ⁵ *Moyer v. Nebraska Dept. of Motor Vehicles*, 275 Neb. 688, 747 N.W.2d 924 (2008); *People v. Penaflorida*, 34 Misc. 3d 420, 932 N.Y.S.2d 682 (N.Y. City Civ. Ct. 2011).

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3 Am. Jur. 2d Affidavits § 10

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Affidavits

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IV. Elements of Affidavit

A. In General

§ 10. Jurat

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Affidavits](#)  12

Forms

Forms relating to jurat, generally, see Am. Jur. Legal Forms 2d, Affidavits and Declarations [[Westlaw® Search Query](#)]

Forms relating to constituent parts of affidavits, generally, see Am. Jur. Pleading and Practice Forms, Affidavits [[Westlaw® Search Query](#)]

Definition:

A “jurat” is a certificate added to an affidavit stating when, before whom, and where it was made.¹

If a declaration has in fact been made under oath, it is an “affidavit” although no jurat may be attached.² A jurat, which is a symbol certifying the administration of an oath, is not part of an affidavit³ but simply evidence that oath was taken.⁴ The jurat provides one effective means of attesting that an affidavit was sworn under oath but is not the only effective or permissible means.⁵

Footnotes

- ¹ [Allstate Savings & Loan Assn. v. Lotito](#), 116 Cal. App. 3d 998, 172 Cal. Rptr. 535 (2d Dist. 1981); [In re Interest of Fedalina G.](#), 272 Neb. 314, 721 N.W.2d 638 (2006); [Residential Dynamics, LLC v. Loveless](#), 186 S.W.3d 192 (Tex. App. Fort Worth 2006).
A “notary jurat” is a certificate of the due administration of an oath, the purpose of which is to evidence the fact that the affidavit has been duly sworn to by an officer authorized to administer an oath. [State v. Colon](#), 230 Conn. 24, 644 A.2d 877 (1994).
Jurats are generally not competent to prove the identity of the affiant. [Jordan v. Deery](#), 609 N.E.2d 1104 (Ind. 1993).
As to the power of notaries to administer oaths and affirmations, see [Am. Jur. 2d, Notaries Public](#) § 34.
- ² [Eveleigh v. Conness](#), 261 Kan. 970, 933 P.2d 675 (1997).
As to the effect of the omission of a jurat, see § 11.
- ³ [Yang v. Stafford](#), 515 N.E.2d 1157, 1 A.L.R.5th 1023 (Ind. Ct. App. 1987).
- ⁴ [Bigler v. State](#), 602 N.E.2d 509 (Ind. Ct. App. 1992); [Moyer v. Nebraska Dept. of Motor Vehicles](#), 275 Neb. 688, 747 N.W.2d 924 (2008).
- ⁵ [State v. Colon](#), 230 Conn. 24, 644 A.2d 877 (1994).

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3 Am. Jur. 2d Affidavits § 11

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IV. Elements of Affidavit

A. In General

§ 11. Jurat—Effect of omission

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Affidavits](#)  12

According to one line of authority, the omission of a jurat is not fatal to the validity of an affidavit so long as it appears either from the instrument itself or from evidence aliunde that the affidavit was, in fact, duly sworn to before authorized officer.¹In addition, statutory law may require that an affidavit be sworn to but not require a jurat or clause stating that the writing was sworn to before the officer.²Similarly, a document which has no jurat or certificate that it was sworn to by the person who signed it may be shown to be an affidavit by other evidence.³Errors or omissions in the jurat ordinarily will not render void an otherwise valid affidavit.⁴

In some jurisdictions, however, in the absence of a valid jurat, a writing in the form of an affidavit has no force, no validity, and amounts to nothing when standing alone or when construed in connection with other evidence.⁵Another view is that an affidavit with an invalid jurat is admissible as an unsworn statement if there is no requirement that the statement be sworn for the purpose that it is offered.⁶

Similarly, in some jurisdictions, without the official certification by an officer authorized to administer oaths, a statement is not an “affidavit.”⁷

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Footnotes

¹ [Bigler v. State](#), 602 N.E.2d 509 (Ind. Ct. App. 1992).

² [Mansions in the Forest, L.P. v. Montgomery County](#), 365 S.W.3d 314 (Tex. 2012).

³ [Meigs v. Black](#), 25 Kan. App. 2d 241, 960 P.2d 770 (1998).

⁴ [Knix v. State](#), 922 P.2d 913 (Alaska Ct. App. 1996); [Cintuc, Inc. v. Kozubowski](#), 230 Ill. App. 3d 969, 172 Ill. Dec. 822, 596 N.E.2d 101 (1st Dist. 1992); [Complete Orthopedic Supplies, Inc. v. State Farm Mut. Auto. Ins. Co.](#), 23 Misc.

3d 5, 877 N.Y.S.2d 597 (App. Term 2009).

⁵ Haygood v. Head, 305 Ga. App. 375, 699 S.E.2d 588 (2010), cert. denied, (Feb. 28, 2011).

⁶ Pappas v. State, 179 Ind. App. 547, 386 N.E.2d 718 (1979).

⁷ Orbe v. Orbe, 651 So. 2d 1295 (Fla. 5th DCA 1995); Hall v. Rutherford, 911 S.W.2d 422 (Tex. App. San Antonio 1995), writ denied, (Feb. 29, 1996).

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3 Am. Jur. 2d Affidavits § 12

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Affidavits

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IV. Elements of Affidavit

A. In General

§ 12. Affidavit taken in another state

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Affidavits](#)  13

Forms

Forms relating to affidavits in another state, or jurisdiction, generally, see Am. Jur. Legal Forms 2d, Affidavits and Declarations; Am. Jur. Pleading and Practice Forms, Affidavits [\[Westlaw® Search Query\]](#)

In some jurisdictions, an affidavit, signed and sworn to before a notary in another state, does not require an accompanying certificate authenticating the notary's authority to administer oaths.¹ In others, oaths, affidavits, and acknowledgments taken in other states that are required must be administered by authorized person and authenticated by the signature and seal of that person.²

In the absence of any statutory provisions as to what constitutes a sufficient authentication of the official character of a foreign notary, the seal of office is generally considered sufficient.³

Observation:

An Israeli advocate was not a person who could authenticate the defendant's affidavit, which was filed in support of his motion to dismiss for lack of personal jurisdiction, since being an advocate in Israel did not automatically confer the status of a notary public.⁴

Some authorities decline to take judicial notice of the authority of a notary in another state to take affidavits but require that the authority of the officer before whom the affidavit was taken be shown,⁵ including that the power of the notary to administer an oath is customary and inherent in his or her office and that statutes conferring the power are merely declaratory in their nature.⁶

CUMULATIVE SUPPLEMENT

Cases:

Irregularity in affidavit, in the attachment of an acknowledgement in accordance with California law rather than a jurat under Nebraska law with respect to affidavit of lessor's counsel who executed affidavit in California, did not prejudice lessee with respect to calculation of actual expenses to lessor as a condition of grant of lessee's motion for continuance on eve of trial in lessor's breach of contract action, where a notary public signed acknowledgment under penalty of perjury and affixed her notarial seal, and affidavit on its face stated that it was sworn and it was signed before an official authorized to administer oaths. [Neb. Rev. Stat. § 25-1245](#); [Neb. Ct. R. Disc. § 6-328\(b\)](#). [AVG Partners I, LLC v. Genesis Health Clubs of Midwest, LLC](#), 307 Neb. 47, 948 N.W.2d 212 (2020).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Hawk v. DaimlerChrysler Services North America, LLC](#), 275 Ga. App. 712, 621 S.E.2d 828 (2005); [Firstcom Broadcast Services v. New York Sound Inc.](#), 184 Misc. 2d 524, 709 N.Y.S.2d 329 (N.Y. City Civ. Ct. 2000).
- ² [Orbe v. Orbe](#), 651 So. 2d 1295 (Fla. 5th DCA 1995).
- ³ [Hawk v. DaimlerChrysler Services North America, LLC](#), 275 Ga. App. 712, 621 S.E.2d 828 (2005).
As to the authority of notaries to administer oaths and take affidavits, generally, see [Am. Jur. 2d, Notaries Public § 34](#).
As to the authentication of extradition papers, see [Am. Jur. 2d, Extradition §§ 74, 75, 78, 79](#).
- ⁴ [Ben-Aziz v. Polani](#), 710 So. 2d 125 (Fla. 4th DCA 1998).
- ⁵ [Teutonia Loan & Building Co. v. Turrell](#), 19 Ind. App. 469, 49 N.E. 852 (1898); [Holbrook v. Libby](#), 113 Me. 389, 94 A. 482 (1915).
- ⁶ [Simpson v. Wicker](#), 120 Ga. 418, 47 S.E. 965 (1904).

3 Am. Jur. 2d Affidavits IV B Refs.

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IV. Elements of Affidavit

B. Personal Knowledge of Affiant; Statement of Facts

[Topic Summary](#) | [Correlation Table](#)


Research References

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IV. Elements of Affidavit

B. Personal Knowledge of Affiant; Statement of Facts

§ 13. Generally

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West's Key Number Digest

West's Key Number Digest, [Affidavits](#)  3

An affidavit must be based on personal knowledge,¹ and its allegations should be of pertinent facts and circumstances rather than conclusions.² Although an affidavit must be verified by a person with personal knowledge of the facts, the court may rely on reasonable inferences drawn from the facts stated.³ An affidavit may be considered even if conclusions are intermingled with facts.⁴ When an affiant makes a conclusion of fact, it must appear that the affiant had an opportunity to observe and did observe matters about which he or she testifies.⁵ Statements in affidavits as to opinion, belief, or conclusions of law are of no effect.⁶ When ultimate facts or conclusions of law appear in an affidavit which also contains the proper subject of affidavit testimony, facts within the personal knowledge of the affiant, the extraneous material should be disregarded and only the facts considered.⁷ The affiant must swear or affirm under oath that the facts stated are true.⁸

An affidavit need not follow the precise language of the statute requiring such affidavit; substantial compliance is sufficient.⁹

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Footnotes

- ¹ [§ 14.](#)
As to allegations made on information and belief, see [§ 15.](#)
- ² [Scott v. Ranch Roy-L, Inc.](#), 182 S.W.3d 627 (Mo. Ct. App. E.D. 2005); [PPX Enterprises, Inc. v. Musicali](#), 42 N.Y.2d 897, 397 N.Y.S.2d 987, 366 N.E.2d 1341 (1977); [Lemon v. Combs](#), 164 N.C. App. 615, 596 S.E.2d 344 (2004).
Affidavits are not competent when they fail to show a basis of actual personal knowledge or if they state conclusions without the support of evidentiary facts. [Green v. Green](#), 2009 ND 162, 772 N.W.2d 612 (N.D. 2009).
- ³ [In re Contempt of Steingold](#), 244 Mich. App. 153, 624 N.W.2d 504 (2000).
- ⁴ [Willig v. Shelnutt](#), 224 Ga. App. 530, 480 S.E.2d 924 (1997).

- ⁵ Scott v. City of Seymour, 659 N.E.2d 585 (Ind. Ct. App. 1995); In re David A. Simpson, P.C., 211 N.C. App. 483, 711 S.E.2d 165, 74 U.C.C. Rep. Serv. 2d 629 (2011).
- ⁶ Richards v. Meeske, 12 Neb. App. 406, 675 N.W.2d 707 (2004), aff'd in part, rev'd in part on other grounds, 268 Neb. 901, 689 N.W.2d 337 (2004); In re Yopp, 720 S.E.2d 769 (N.C. Ct. App. 2011).
- ⁷ A. L. Pickens Co., Inc. v. Youngstown Sheet & Tube Co., 650 F.2d 118 (6th Cir. 1981).
- ⁸ Coastal Cement Sand Inc. v. First Interstate Credit Alliance, Inc., 956 S.W.2d 562 (Tex. App. Houston 14th Dist. 1997).
- ⁹ Simonton v. Simonton, 40 Idaho 751, 236 P. 863, 42 A.L.R. 1363 (1925); State v. Bailey, 157 Ind. 324, 61 N.E. 730 (1901); Clayton v. Clark, 76 Kan. 832, 92 P. 1117 (1907).

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3 Am. Jur. 2d Affidavits § 14

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IV. Elements of Affidavit

B. Personal Knowledge of Affiant; Statement of Facts

§ 14. Personal knowledge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Affidavits](#)  3, 17

Forms

Forms relating to personal knowledge, generally, see Am. Jur. Legal Forms 2d, Affidavits and Declarations [[Westlaw® Search Query](#)]

Generally, affidavits must be made on the affiant's personal knowledge.¹

Definition:

"Personal knowledge," as requisite basis for affidavits, means something the witness actually saw or heard as distinguished from what he or she learned from some other person or source.²

An affidavit not based on personal knowledge is legally insufficient to support a claim.³ The affidavit must in some way show that the affiant is personally familiar with the facts so that he or she could personally testify as a witness.⁴

In some jurisdictions, the personal knowledge of facts asserted in an affidavit is not presumed from a mere positive averment of facts, but rather, the court should be shown how the affiant knew or could have known such facts, and if there is no

evidence from which an inference of personal knowledge can be drawn, then it is presumed that such does not exist.⁵The mere recitation that the affidavit is based on personal knowledge is inadequate if the affidavit does not positively show a basis for such knowledge.⁶In contrast, in other jurisdictions, the mere statement of the affiant that the testimony given comes from personal knowledge is sufficient.⁷Where it appears that an affidavit is based on the personal knowledge of the affiant and a reasonable inference is that the affiant could competently testify to the contents of the affidavit at trial, there is no requirement that the affiant specifically attest to those facts.⁸

CUMULATIVE SUPPLEMENT

Cases:

An affidavit need not contain an explicit recital of personal knowledge when it can be reasonably inferred from its contents that the material parts thereof are within the affiant's personal knowledge. [City of Fort Wayne v. Consolidated Elec. Distributors, Inc.](#), 998 N.E.2d 733 (Ind. Ct. App. 2013).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Reuther v. Smith](#), 926 So. 2d 9 (La. Ct. App. 4th Cir. 2006); [Hinton v. Proctor & Schwartz, Inc.](#), 99 S.W.3d 454 (Mo. Ct. App. E.D. 2003); [State v. Pearson](#), 145 N.C. App. 506, 551 S.E.2d 471 (2001), [aff'd](#), 356 N.C. 22, 566 S.E.2d 50 (2002); [State ex rel. Lanham v. DeWine](#), 135 Ohio St. 3d 191, 2013-Ohio-199, 985 N.E.2d 467 (2013); [Mountain West Surgical Center, L.L.C. v. Hospital Corp. of Utah](#), 2007 UT 92, 173 P.3d 1276 (Utah 2007).
- ² [Hibernia Nat. Bank v. Rivera](#), 996 So. 2d 534 (La. Ct. App. 5th Cir. 2008).
- ³ [Marks v. St. Luke's Episcopal Hosp.](#), 319 S.W.3d 658 (Tex. 2010).
- ⁴ [Kugler v. Southmark Realty Partners III](#), 309 Ill. App. 3d 790, 243 Ill. Dec. 407, 723 N.E.2d 710 (1st Dist. 1999); [Currituck Associates Residential Partnership v. Hollowell](#), 170 N.C. App. 399, 612 S.E.2d 386 (2005); [State ex rel. Sekermestrovich v. Akron](#), 90 Ohio St. 3d 536, 2001-Ohio-223, 740 N.E.2d 252 (2001); [Chambliss v. Stohler](#), 124 S.W.3d 116 (Tenn. Ct. App. 2003).
- ⁵ [Bova v. Vinciguerra](#), 139 A.D.2d 797, 526 N.Y.S.2d 671 (3d Dep't 1988); [In re David A. Simpson, P.C.](#), 211 N.C. App. 483, 711 S.E.2d 165, 74 U.C.C. Rep. Serv. 2d 629 (2011).
- ⁶ [Trostle v. Combs](#), 104 S.W.3d 206 (Tex. App. Austin 2003).
- ⁷ [Formaro v. SunTrust Bank](#), 306 Ga. App. 398, 702 S.E.2d 443 (2010).
- ⁸ [Liaquat Khan v. Van Remmen, Inc.](#), 325 Ill. App. 3d 49, 258 Ill. Dec. 628, 756 N.E.2d 902 (2d Dist. 2001).

3 Am. Jur. 2d Affidavits § 15

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Affidavits

Carrie A. Wood, J.D., of the staff of the National Legal Research Group, Inc.

IV. Elements of Affidavit

B. Personal Knowledge of Affiant; Statement of Facts

§ 15. Allegations on information and belief

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Affidavits](#)  3

Forms

Forms relating to personal knowledge, generally, see Am. Jur. Legal Forms 2d, Affidavits and Declarations [[Westlaw® Search Query](#)]

Affidavits made pursuant to affiant's information and belief are limited as to the oath they make because the affiant is not swearing that the facts as averred are true to the best of his or her personal knowledge; rather, the affiant is swearing that he or she makes the averments in good faith upon his or her best information and bona fide belief.¹ The source of the information and the grounds for the belief must be provided.² An affidavit made on information and belief is insufficient as an affidavit³ unless authorized by a special statute⁴ or where those matters sworn to are of necessity opinions or conclusions of law.⁵ The legislature may expressly authorize the use of affidavits on information and belief to support a particular pleading or motion.⁶ Conversely, the legislature may preclude use of affidavits on information and belief to support particular pleading or motion by expressly requiring allegations based on personal knowledge.⁷

Observation:

In an affidavit based on an affiant's best knowledge and belief, every item set forth as fact in the affidavit may be false, and yet each one may be true to the best of the affiant's knowledge and belief.⁸

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Footnotes

- ¹ Estate of Neterer v. Indiana Dept. of State Revenue, 956 N.E.2d 1214 (Ind. Tax Ct. 2011), transfer denied, 971 N.E.2d 668 (Ind. 2012); State, Dept. of Human Services for Martin v. Neilson, 771 S.W.2d 128 (Tenn. Ct. App. 1989).
As to an affidavit for attachment on information and belief, see Am. Jur. 2d, Attachment and Garnishment § 243.
As to the verification of an affidavit in an application to vacate, modify, or set aside a judgment based upon information and belief, see Am. Jur. 2d, Judgments § 709.
- ² In re Sullivan, 185 Misc. 2d 39, 710 N.Y.S.2d 853 (Sup 2000).
- ³ Lazar Bros. Trucking, Inc. v. A & B Excavating, Inc., 365 Ill. App. 3d 559, 302 Ill. Dec. 778, 850 N.E.2d 215 (1st Dist. 2006).
- ⁴ Slater v. Metro Nissan of Montclair, 801 S.W.2d 253 (Tex. App. Fort Worth 1990), writ denied, (Apr. 3, 1991).
- ⁵ State, Dept. of Human Services for Martin v. Neilson, 771 S.W.2d 128 (Tenn. Ct. App. 1989).
- ⁶ City of Santa Cruz v. Municipal Court, 49 Cal. 3d 74, 260 Cal. Rptr. 520, 776 P.2d 222 (1989).
- ⁷ City of Santa Cruz v. Municipal Court, 49 Cal. 3d 74, 260 Cal. Rptr. 520, 776 P.2d 222 (1989).
- ⁸ Ingram v. JIK Realty Co., Inc., 199 Ga. App. 335, 404 S.E.2d 802 (1991).

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3 Am. Jur. 2d Affidavits § 16

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Affidavits

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IV. Elements of Affidavit

B. Personal Knowledge of Affiant; Statement of Facts

§ 16. Allegations in the alternative

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Affidavits](#)  17

Forms

Forms relating to allegations in the alternative, see Am. Jur. Legal Forms 2d, Affidavits and Declarations [[Westlaw® Search Query](#)]

If a remedy exists upon proof of any one of various distinct and separate grounds, an affidavit which alleges alternatively that one or another ground exists does not definitely allege the existence of either ground and, by reason of the uncertainty of its allegations, is generally held insufficient.¹ A distinction is, however, to be made between alleging in the alternative two or more distinct grounds and alleging in the alternative two or more phases of a single ground; in the latter case, the alternative form is of no consequence.²

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Footnotes

¹ Helton v. McLeod & Dantzler, 93 Miss. 516, 46 So. 534 (1908); In re Kuser's Estate, 132 N.J. Eq. 260, 26 A.2d 688 (Prerog. Ct. 1942); Piedmont Grocery Co. v. Hawkins, 83 W. Va. 180, 98 S.E. 152, 4 A.L.R. 828 (1919).

² McCarthy Bros. Co. v. McLean County Farmers' Elevator Co., 18 N.D. 176, 118 N.W. 1049 (1908); Johnson v. Emery, 31 Utah 126, 86 P. 869 (1906); Piedmont Grocery Co. v. Hawkins, 83 W. Va. 180, 98 S.E. 152, 4 A.L.R. 828 (1919).

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3 Am. Jur. 2d Affidavits § 17

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IV. Elements of Affidavit

B. Personal Knowledge of Affiant; Statement of Facts

§ 17. Amendment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Affidavits](#)  16

Forms

Forms relating to amendment, generally, see Am. Jur. Legal Forms 2d, Affidavits and Declarations [[Westlaw® Search Query](#)]

Affidavits are as amendable as pleadings,¹ and an amendment by substitution is as permissible as an amendment by striking from or adding to the contents of the paper which it is sought to amend.² Where the date of the affiant's signature and the date of the notary's attestation differ, such error is an amendable defect and does not render the affidavit void ab initio.³ Similarly, a failure to sign an affidavit in the presence of a notary public is an amendable defect and does not render the affidavit void ab initio.⁴

An objection that an affidavit contains hearsay is an objection to the form of the affidavit, which must be objected to in the trial court, and the opposing party must have the opportunity to amend the affidavit.⁵

Practice Tip:

The trial court in its discretion may extend the time for filing amendments to defective affidavits.⁶

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Footnotes

- ¹ [Joyce's Submarine Sandwiches, Inc. v. California Public Employees' Retirement System](#), 195 Ga. App. 748, 395 S.E.2d 257 (1990).
As to the amendment of affidavits in attachment and garnishment proceedings, see [Am. Jur. 2d, Attachment and Garnishment §§ 262 to 265](#).
- ² [Phoebe Putney Memorial Hosp. v. Skipper](#), 235 Ga. App. 534, 510 S.E.2d 101 (1998).
- ³ [Kropp v. Roberts](#), 246 Ga. App. 497, 540 S.E.2d 680 (2000).
- ⁴ [Weekes v. Nationwide General Ins. Co.](#), 232 Ga. App. 144, 500 S.E.2d 620 (1998).
Absent a showing that the tenant was prejudiced by permitting a dispossessory affidavit to be expanded by unverified amendments, the court could properly allow the affidavit to be amended after trial to add a verification. [Joyce's Submarine Sandwiches, Inc. v. California Public Employees' Retirement System](#), 195 Ga. App. 748, 395 S.E.2d 257 (1990).
- ⁵ [Hewitt v. Biscaro](#), 353 S.W.3d 304 (Tex. App. Dallas 2011).
- ⁶ [Kropp v. Roberts](#), 246 Ga. App. 497, 540 S.E.2d 680 (2000).

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3 Am. Jur. 2d Affidavits V Refs.

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V. Use and Admissibility; Sufficiency

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3 Am. Jur. 2d Affidavits § 18

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V. Use and Admissibility; Sufficiency

§ 18. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Affidavits](#)  18

In general practice, affidavits may be used to start in motion the process of the court and are generally received as evidence upon the hearing of motions.¹ There are affidavits which serve as evidence and which advise the court as it decides preliminary issues or determines substantial rights where evidence is not in conflict; in the alternative, there are affidavits which merely serve to invoke the judicial power.² Generally, a witness must appear at a trial to testify in support of the contents of an affidavit.³ Only such portion of an affidavit that sets forth facts that are admissible in evidence can be considered.⁴

A plaintiff cannot, under the guise of fortifying the complaint, present an entirely new cause of action or expand the scope of his or her cause of action by means of an affidavit.⁵

Caution:

An affidavit need not reflect the direct personal observations of the affiant and may be based on hearsay.⁶ However, affidavit testimony as to which the affiant has no personal knowledge and which includes information that must have been secured from others may be inadmissible hearsay.⁷

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Footnotes

¹ [Walker v. First Indus. Bank](#), 95 Colo. 411, 36 P.2d 467 (1934); [State v. District Court of Ninth Judicial Dist. in and for Gallatin County](#), 72 Mont. 245, 233 P. 126 (1925).

Ex parte affidavits may be received as evidence in interlocutory or preliminary matters although they would be but hearsay at trial. [Scott v. Crussen](#), 741 N.E.2d 743 (Ind. Ct. App. 2000).

As to the use of affidavits in supporting or opposing motions, see [Am. Jur. 2d, Motions, Rules, and Orders §§ 23 to 27](#)

As to affidavits in verifying pleadings, see [Am. Jur. 2d, Pleading § 845](#).

As to affidavits to prove service of process, see [Am. Jur. 2d, Process § 295](#).

As to affidavits in support of a motion to suppress, see [Am. Jur. 2d, Evidence § 662](#).

² [Lincoln Nat. Bank v. Munding](#), 528 N.E.2d 829 (Ind. Ct. App. 1988).

³ [Waltman v. Rowell](#), 913 So. 2d 1083 (Ala. 2005).

⁴ [Roberson v. Ocwen Federal Bank FSB](#), 250 Ga. App. 350, 553 S.E.2d 162 (2001).

⁵ [Appleton v. Board of Educ. of Town of Stonington](#), 53 Conn. App. 252, 730 A.2d 88, 135 Ed. Law Rep. 170 (1999), judgment aff'd in part, rev'd in part on other grounds, 254 Conn. 205, 757 A.2d 1059, 146 Ed. Law Rep. 1097 (2000).

⁶ [Doggett v. State](#), 791 So. 2d 1043 (Ala. Crim. App. 2000).

⁷ [Home Bank of Guntersville v. Perpetual Federal Sav. and Loan Ass'n](#), 547 So. 2d 840, 10 U.C.C. Rep. Serv. 2d 879 (Ala. 1989).

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3 Am. Jur. 2d Affidavits § 19

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V. Use and Admissibility; Sufficiency

§ 19. Admissibility as evidence

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[Disputation of truth of matters stated in affidavit in support of search warrant—modern cases, 24 A.L.R.4th 1266](#)

[Admissibility of affidavit to impeach witness, 14 A.L.R.4th 828](#)

Generally, affidavits are not competent evidence and should not be considered by the court as a trier of fact.¹ A trial court sitting as the trier of fact is not required to accept as true the statements made in an affidavit even if that affidavit is uncontradicted.² The general rule is that where admissible, affidavits are commonly regarded as weak evidence, to be received with caution, and that they are not conclusive of the facts stated therein even though not contradicted by counter affidavits.³ Even in rare instances in which an affidavit is acceptable as a substitute for testimony, it must be based on personal knowledge, must set forth only facts admissible in evidence, and must show that the affiant is competent to testify to the matters contained therein.⁴ An affidavit must state the facts positively and not merely on information and belief in order for the affidavit to be used as evidence.⁵ Where an affidavit is to serve as evidence, those portions which are made on information and belief have no evidentiary value.⁶

Affidavits generally can be used for impeachment purposes.⁷

An affidavit is ordinarily not admissible to prove facts in issue at an evidentiary hearing because it is not subject to cross examination and would improperly shift the burden of proof to the adverse party.⁸

Observation:

An affidavit that results in the issuance of an abuse protection order may be admitted in a criminal prosecution for assault and battery for its full probative value so long as the declarant is subject to cross-examination at trial; such affidavits carry several indicia of reliability in that they must be made under the pains and penalties of perjury, are in writing, and comprise part of a complaint for protection that must be brought in court before a judge.⁹

An affidavit may be admissible as evidence on a material fact at issue if evidence is admissible generally on that fact as an exception to the hearsay rule.¹⁰

Unsigned affidavits of a witness are not admissible evidence.¹¹

As a general rule, a party is not permitted to create an issue of fact by submitting an affidavit whose conclusions contradict a prior deposition or other sworn testimony.¹² While supplemental affidavits can be employed to clarify ambiguous or confusing deposition testimony,¹³ the court should disregard any inadmissible information contained in affidavit.¹⁴ Thus, only such portion of an affidavit that sets forth facts that are admissible in evidence can be considered.¹⁵ On the other hand, every discrepancy contained in an affidavit does not justify a trial court's refusal to give credence to such evidence, and in light of the jury's role in resolving questions of credibility, a trial court should not reject the contents of an affidavit even if it is at odds with statements made in an earlier deposition.¹⁶

While an affidavit is generally inadmissible as a piece of independent testimony, the opposite party may waive objection to its admissibility,¹⁷ and incompetent statements in an affidavit become competent evidence when admitted without objection.¹⁸ Where a party moves to strike an affidavit, its failure to obtain a ruling on its motion to strike operates as a waiver of the objections to the affidavit.¹⁹

Affidavits used to support or oppose a motion for summary judgment must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated.²⁰ Even though affidavits are generally inadmissible as hearsay, they are an exception to the requirement that summary judgment be supported or opposed only by admissible evidence.²¹

CUMULATIVE SUPPLEMENT

Cases:

While an affidavit must be withdrawn if the information asserted is discovered to be false, no rule or law provides for withdrawal where the affiant merely no longer wishes to be involved. Rules Civ.Proc., Rule 11; Rules of Prof.Conduct, Rule 3.3. [Wald v. Holmes, 2013 ND 212, 839 N.W.2d 820 \(N.D. 2013\)](#).

The trial court's admission of city employee's affidavit, which stated the residence delivery truck driver parked his truck outside of, at the time of the accident with bicyclist, was outside of the city's corporate limits, was not an abuse of discretion, in negligence action against delivery company and truck driver; the affidavit was relevant to establish the area was not part of a business or residence district, and, even if affidavit was conclusory or inadmissible hearsay, delivery company was not harmed by the admission of the affidavit. [United Parcel Service, Inc. v. Rankin, 468 S.W.3d 609 \(Tex. App. San Antonio 2015\)](#), petition for review filed, (July 20, 2015).

[END OF SUPPLEMENT]

Footnotes

- ¹ [Brandel Realty Co. v. Olson](#), 159 Ill. App. 3d 230, 111 Ill. Dec. 181, 512 N.E.2d 85 (2d Dist. 1987); [Associated Health Care Group, Inc. v. Metropolitan Property & Cas. Ins. Co.](#), 2009 Mass. App. Div. 283, 2009 WL 4654491 (2009).
Affidavits are generally not competent evidence unless provided by statute. [McDonald v. Superior Court](#), 22 Cal. App. 4th 364, 27 Cal. Rptr. 2d 310 (4th Dist. 1994); [Michael F. Smith, CPA v. Alford](#), 906 So. 2d 674 (La. Ct. App. 1st Cir. 2005).
As to the admissibility of perjury evidence, see [Am. Jur. 2d, Perjury §§ 78 to 80](#).
- ² [Walker v. Texas Dept. of Family and Protective Services](#), 312 S.W.3d 608 (Tex. App. Houston 1st Dist. 2009).
- ³ [Audit Services v. Kraus Const., Inc.](#), 189 Mont. 94, 615 P.2d 183 (1980) (overruled on other grounds by, [Quantum Electric, Inc. v. Schaeffer](#), 2003 MT 29, 314 Mont. 193, 64 P.3d 1026 (2003)).
- ⁴ [King's Joint Venture v. Marino](#), 827 So. 2d 521 (La. Ct. App. 4th Cir. 2002), writ denied, 836 So. 2d 48 (La. 2003).
An affidavit that states that it is based on "personal knowledge and/or knowledge acquired upon inquiry" does not unequivocally show that it is based on personal knowledge and therefore cannot serve as evidence. [Federal Financial Co. v. Delgado](#), 1 S.W.3d 181, 40 U.C.C. Rep. Serv. 2d 759 (Tex. App. Corpus Christi 1999).
As to personal knowledge, see § 14.
- ⁵ [Lazar Bros. Trucking, Inc. v. A & B Excavating, Inc.](#), 365 Ill. App. 3d 559, 302 Ill. Dec. 778, 850 N.E.2d 215 (1st Dist. 2006); [Hobbs v. Prudential Property and Cas. Co.](#), 1993 OK CIV APP 76, 853 P.2d 252 (Ct. App. Div. 1 1993).
- ⁶ [Humphrey v. Appellate Division](#), 29 Cal. 4th 569, 127 Cal. Rptr. 2d 645, 58 P.3d 476 (2002).
- ⁷ [Moseley v. Lewis & Brackin](#), 583 So. 2d 1297 (Ala. 1991).
An affidavit may be used to impeach an officer's return on the service of a summons. [Erdman v. National Indem. Co.](#), 180 Neb. 133, 141 N.W.2d 753 (1966).
As to the impeachment of witnesses by means of prior inconsistent statements, see [Am. Jur. 2d, Witnesses §§ 907, 931](#).
- ⁸ [Fortune v. Fortune](#), 61 So. 3d 441 (Fla. 2d DCA 2011).
Ex parte affidavits are not admissible against a defendant in criminal case. [Miller v. State](#), 266 Ga. 850, 472 S.E.2d 74 (1996).
- ⁹ [Com. v. Belmer](#), 78 Mass. App. Ct. 62, 935 N.E.2d 327 (2010), review denied, 459 Mass. 1101, 942 N.E.2d 182 (2011).
- ¹⁰ [Discover Bank v. Pommell](#), 103 Ark. App. 96, 286 S.W.3d 735 (2008); [Lupyan v. Lupyan](#), 263 Pa. Super. 303, 397 A.2d 1220 (1979).
As to hearsay evidence, generally, see [Am. Jur. 2d, Evidence §§ 668 to 714](#).
- ¹¹ [Brewster v. State](#), 697 N.E.2d 95 (Ind. Ct. App. 1998).
A prisoner's summary judgment affidavit attesting to the source and amount of income in her inmate account was neither signed nor verified by the prisoner and, as such, could not be considered as summary judgment evidence in the State's action for reimbursement of incarceration costs. [State ex rel. Nixon v. McIntyre](#), 234 S.W.3d 474 (Mo. Ct. App. W.D. 2007).
- ¹² [Buckner v. Sam's Club, Inc.](#), 75 F.3d 290 (7th Cir. 1996).
- ¹³ [Buckner v. Sam's Club, Inc.](#), 75 F.3d 290 (7th Cir. 1996).
- ¹⁴ [Bankmark of Florida, Inc. v. Star Financial Card Services, Inc.](#), 679 N.E.2d 973 (Ind. Ct. App. 1997).
While the trial court is vested with discretion to consider affidavits not timely filed, refusal to exercise that discretion is not error. [Wade v. Howard](#), 232 Ga. App. 55, 499 S.E.2d 652 (1998).
- ¹⁵ [Roberson v. Ocwen Federal Bank FSB](#), 250 Ga. App. 350, 553 S.E.2d 162 (2001).

- ¹⁶ Kennett-Murray Corp. v. Bone, 622 F.2d 887 (5th Cir. 1980).
- ¹⁷ Connecticut Mut. Life Ins. Co. v. Hillmon, 188 U.S. 208, 23 S. Ct. 294, 47 L. Ed. 446 (1903).
- ¹⁸ Vartanian v. Croll, 117 Cal. App. 2d 639, 256 P.2d 1022 (1st Dist. 1953); Naficy v. Braker, 642 S.W.2d 282 (Tex. App. Houston 14th Dist. 1982), writ refused n.r.e., (Jan. 26, 1983).
- ¹⁹ Commerce Trust Co. v. Air 1st Aviation Companies, Inc., 366 Ill. App. 3d 135, 303 Ill. Dec. 233, 851 N.E.2d 131 (1st Dist. 2006); Cousart v. Charlotte-Mecklenburg Hosp. Authority, 209 N.C. App. 299, 704 S.E.2d 540 (2011), review denied, 365 N.C. 330, 717 S.E.2d 375 (2011).
- ²⁰ Fed. R. Civ. P. 56(c)(4).
- ²¹ Hargrave v. Delaughter, 10 So. 3d 245 (La. Ct. App. 3d Cir. 2009).

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3 Am. Jur. 2d Affidavits § 20

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V. Use and Admissibility; Sufficiency

§ 20. Sufficiency

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West's Key Number Digest

West's Key Number Digest, [Affidavits](#)  17, 18

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[Sufficiency of affidavit made by attorney or other person on behalf of plaintiff for purpose of service by publication, 47 A.L.R.2d 423](#)

To be legally sufficient, the affidavit should show affirmatively the affiant's competence to testify to the facts stated,¹ and the allegation must directly and unequivocally represent that the facts are true and within the personal knowledge of the affiant.² Affidavits that merely state conclusions rather than facts are insufficient.³

Definition:

A "conclusory statement" in an affidavit is one that is not credible or susceptible to being readily controverted.⁴

Thus, an affidavit that contains only legal conclusions is substantively deficient, and although formal deficiencies in an affidavit can be waived if not raised in trial court, substantive deficiencies cannot be waived.⁵

The chief test of the sufficiency of an affidavit is its ability to serve as a predicate for perjury prosecution.⁶ Affidavits are insufficient unless they contain allegations that are direct and unequivocal, and perjury can be assigned upon them.⁷ Thus, the

general test applied to determine the sufficiency of an affidavit is whether if the facts to which the affiant swears are false, the affiant may be prosecuted and convicted of perjury.⁸

Practice Tip:

It is not necessary that the facts presented by an affidavit be sufficient to support a verdict.⁹ Rather, they need only be admissible as evidence.¹⁰

The sufficiency of an affidavit is an issue ordinarily left to the discretion of the court.¹¹ The courts must accept an affidavit as true if it is uncontradicted by a counteraffidavit or other evidentiary materials.¹² A counteraffidavit is not the only means by which an affidavit can be contradicted; an affidavit may be contradicted by other documentary evidence.¹³ Accordingly, where an opposing party does not deny or controvert facts stated in a movant's affidavit, the facts may be deemed to be admitted for purposes of court's ruling on such matter.¹⁴ However, it is not a function of an affidavit to bring a legal argument before the trial court.¹⁵

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Footnotes

- ¹ Mills v. Hankla, 297 P.3d 158 (Alaska 2013); State ex rel. Simmons v. Moore, 774 S.W.2d 711 (Tex. App. El Paso 1989).
- ² In Interest of Simpson, 932 S.W.2d 674 (Tex. App. Amarillo 1996).
- ³ AMS Const. Co., Inc. v. Warm Springs Rehabilitation Foundation, Inc., 94 S.W.3d 152 (Tex. App. Corpus Christi 2002).
- ⁴ Residential Dynamics, LLC v. Loveless, 186 S.W.3d 192 (Tex. App. Fort Worth 2006).
- ⁵ Elam v. Quest Chemical Corp., 884 S.W.2d 907 (Tex. App. Beaumont 1994), judgment rev'd on other grounds, 898 S.W.2d 819 (Tex. 1995) and writ granted, (May 25, 1995).
- ⁶ Hoskins v. Sharp, 629 N.E.2d 1271 (Ind. Ct. App. 1994).
As to perjury in affidavits, see Am. Jur. 2d, Perjury §§ 40 to 43.
- ⁷ Natural Gas Clearinghouse v. Midgard Energy Co., 23 S.W.3d 372 (Tex. App. Amarillo 1999).
- ⁸ In re Paternity of H.R.M., 864 N.E.2d 442 (Ind. Ct. App. 2007); In re Butler, 270 S.W.3d 757 (Tex. App. Dallas 2008).
- ⁹ Yang v. Stafford, 515 N.E.2d 1157, 1 A.L.R.5th 1023 (Ind. Ct. App. 1987).
- ¹⁰ Yang v. Stafford, 515 N.E.2d 1157, 1 A.L.R.5th 1023 (Ind. Ct. App. 1987).
- ¹¹ Caggiano v. Ross, 130 A.D.2d 538, 515 N.Y.S.2d 274 (2d Dep't 1987).
- ¹² F.H. Paschen/S.N. Nielsen, Inc. v. Burnham Station, L.L.C., 372 Ill. App. 3d 89, 309 Ill. Dec. 865, 865 N.E.2d 228 (1st Dist. 2007); Frink v. State, 568 N.E.2d 535 (Ind. 1991).
- ¹³ Webb v. Mount Sinai Hosp. and Medical Center of Chicago, Inc., 347 Ill. App. 3d 817, 283 Ill. Dec. 185, 807 N.E.2d 1026 (1st Dist. 2004).

¹⁴ [Thurman v. Champaign Park Dist.](#), 355 Ill. Dec. 575, 960 N.E.2d 18 (App. Ct. 4th Dist. 2011), [appeal denied](#), 356 Ill. Dec. 804, 962 N.E.2d 489 (Ill. 2011); [Rios v. Danuser Mach. Co., Inc.](#), 110 N.M. 87, 792 P.2d 419 (Ct. App. 1990).

¹⁵ [State v. Phathamavong](#), 860 P.2d 1001 (Utah Ct. App. 1993).

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Affidavits

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